IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.7132/06
Om Prakash & Ors. Vs. Union of India & Ors.

Date of Order :: 22nd October, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.N. Kumawat for the petitioners.

Shri M.D. Agarwal with
Shri Sushil Sharma for respondent nos.1&.3
Shri B.K. Sharma, Deputy Government Advocate for respondent nos.2 & 4.
Shri Sandeep Taneja for respondent no.5
Shri Anurag Agarwal for respondent no.6.
Shri Ravi Chirania for respondent no.7.

The petitioners have filed this writ petition with the prayer that the action of the respondents in changing alignment of the National Highway 76 be declared illegal and they be directed to construct the said highway as per the plan originally notified vide Notification dated 16.2.2005 without changing the alignment of the road so as to cover the land of khasra no.119, 122 and 123 owned by respondent

no.7.

Shri S.N. Kumawat, the learned counsel for the petitioners has argued that the respondent Union of India published a notification on 16.2.2005 under Section 3A (1) of the National Highways Act, 1956 (for short - `the Act of 1956) for the purpose of acquiring the land for building of National Highway No.76 on the stretch of land from KM 338.00 to KM 378.00 in the State of Rajasthan in Kota district. Three more notifications were issued thereafter respectively on 22.11.05, 9.12.05 and 19.4.06 under Section 3A(1) of the Act. It is contended that in the new notification now issued, certain area of the land owned by the petitioners has been increased whereas the area of the land of the respondent no.7 has been reduced. According to the petitioners, the respondent nos.1 to 6 have in collusion with respondent no.7 illegally changed the alignment so as to

confer undue benefit to her so that the lands owned by her are excluded from the acquisition. Selection of the land is made after thorough survey and preparation of the plan and final drawings. The petitioners have also placed on record a copy of the revenue map showing the khasra numbers so as to indicate as to through which of the lands, the road will be constructed. It has been alleged that respondent no.7 purchased the land of khasra nos. 119, 121, 122 and 123 from one Ikbal and she being influential person, prevailed upon respondent nos.1 to 6 to change the alignment of the road so as to exclude her land from the purview of acquisition.

Shri S.N. Kumawat, the learned counsel for the petitioners argued that action of the respondents in illegally changing the alignment of the road was arbitrary and malafide and is being taken at the instance

of the husband of respondent no.7 who at one point of time was posted as Divisional Commissioner at Kota and it was on the basis of report of the Sub-Divisional Officer, who acts as Acquisition Officer, that the lands of respondent no.7 were excluded. With the help of Schedule A appended to the writ petition, Shri S.N. Kumawat sought to explain as to how by subsequent acquisition notifications the lands of respondent no.7 were decreased whereas those of the petitioners were increased. Shri S.N. Kumawat argued that with the acquisition now been made in the subsequent notification, the chunk land of the land owned by the petitioners has been divided into two parts, thus rendering it unusable for cultivation. Shri S.N. Kumawat also argued that this matter was prominently highlighted in the media also. It was therefore prayed that the writ petition be allowed in terms of the

aforesaid prayers.

The writ petition was contested by the respondents. Union of India through the Project Director, National Highway 76 who is represented by Shri M.D. Agarwal, learned counsel. District Collector, Kota and Competent Authority and SDM are represented by Shri B.K. Sharma, learned Deputy Government Advocate, Sunway Construction Company is represented by Shri Sandeep Taneja and Salakar Project is represented by Shri Anurag Agarwal and respondent no.7 is represented by Shri Ravi Charinia.

Shri M.D. Agarwal, the learned counsel for respondent no.1 & 3 argued that there was absolutely no basis to allege that respondent no.7 has been in any way favoured. It has been denied that only area of the land of petitioners has been increased in the subsequent notification whereas the area of land owned by the

respondent no.7 was reduced. In fact, Shri M.D. Agarwal, the learned counsel referred to another chart filed with the reply to explain that while in the earlier notification issued under Section 3A dated 16.2.2005, total 0.410 hectare land of petitioner no.1 Om Prakash was proposed to be acquired but in the new notification dated 22.11.05 now 0.200 hectare of land is being acquired. Similarly, in regard to petitioner no.2 Nand Kishore it was argued that under the earlier notification dated 16.2.05, total land area proposed to be acquired was 0.540 hectares but when the notification under Section 3D dated 22.11.05 was issued, it was completely left out and was not being acquired. However new notification under Section 3A was again issued on 9.12.05 in which the area proposed to be acquired from his land was 1.162 hectares. Finally when further notification under Section 3D dated 19.4.06

was issued, only an area of 0.940 hectares is now proposed to be acquired. Shri M.D. Agarwal, sought to clarify that not only the land of respondent no.7, but also certain parcels of the land owned by the petitioners were excluded from the purview of acquisition. It was argued that notification under Section 3A was issued after making evaluation of the land by taking reports and objections from the persons aggrieved within 21 days from the date of publication of notification under Section 3A, which are required to be dealt with in accordance with the provisions of Section 3C of the Act of 1956. Section 3D prescribes the procedure for declaration of acquisition. It was argued that the land finally vested in the Central Government and it then reserves the right to take possession of the same as per Section 3E and 3F of the Act and the amount of compensation is determined under Section 3G

of the Act. It was argued that in the land acquisition process, the alignment is first proposed to be made normally on khasra maps on the basis of preliminary datas. When however notification under Section 3A was issued, actual survey was carried out because only thereupon the authorities possess the right to enter into the lands proposed to be acquired and make a detailed survey. In that process, it transpired that actual alignment was not matching with the details of the lands enumerated in Section 3A notification. The competent authority recommended acquisition of additional land in consultation with the highway authorities in order to transfer the concept of DPR Alignment to the ground with minor improvement so that for shortest route, technically / geometrically improved road can be constructed and provided to users. Engineers who finally reflected the alignment on ground are highly qualified

and technically competent persons. Work of shifting of the electricity / over head / underground was awarded to M/s. Salakar Project, respondent no.6 under 15% supervision charges to JVVNL, Kota and in fact such lines have been shifted about 200 meter distance away from the proposed road. Shri M.D. Agarwal argued that when subsequently the notification under Section 3A was issued, the petitioners did not at all submit any objection as to the change of the alignment. He denied that it is a case of exclusion of lands of respondent no.7. In fact fresh notification under Section 3A was subsequently issued because certain more land and on somewhat different location was required to implement the project. The writ petition is wholly misconceived in as much as the petitioner has neither challenged the notification under Section 3A nor has he challenged the notification issued under Section 3D. It is

argued that the work of the construction of the highway has been lying stand still on account of interim order passed by this Court in the present writ petition on 20.7.2006. Allegations of mala fides have no basis because neither the factual foundation or sustaining such allegation has been led, nor the husband of the petitioner has been impleaded as party. Besides, it is contended that Shri A.K. Garg, husband of the respondent no.7 was not posted as Divisional Commissioner when the report was submitted by the competent authority for making fresh acquisition.

Shri B.K. Sharma, the learned Deputy Government Advocate also opposed the writ petition and adopted the arguments made by Shri M.D. Agarwal. He submitted that with the publication of notification under Section 3D of the Act, the lands now vest in the Union of India and possession of the entire land has since been handed over to

the Project Director, National Highway No.76 on 15.9.2006. Allegations of mala fides are totally baseless. In fact there is no change in the alignment because at the time when subsequent notification was issued, it was a tentative design and the actual plan was prepared after making survey and inspection on ground thereafter. Shri B.K. Sharma, learned Deputy Government Advocate argued that the petitioners having not submitted their objections in response to notification under Section 3A, cannot be now allowed to raise any grievance with regard to position of the said land. He therefore prayed that the writ petition be dismissed.

The respondent no.7 Smt. Kusum Garg has filed separate reply to the writ petition and denied the allegations of mala fides. Learned counsel Shri Ravi Chirania, appearing for her submits that there was absolutely no basis that the alignment has

been changed at the instance of respondent no.7. He argued that the mere fact that respondent no.7 happens to be wife of an officer cannot provide any basis to allege that she has been favoured.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

What is being contended on behalf of petitioners is that while proposing to construct the subject part of the highway, the land of not only petitioners but also of respondent no.7 was sought to be acquired and in the eventual acquisition that was made, while their land was acquired but the land of respondent no.7 was not acquired. Two charts, one by the petitioners and other by the respondents, have been placed on record to show the details of the lands acquired. They however do not differ in material particulars. The

notification under Section 3A was for the first time issued on 16.2.2005. As noticed earlier, when ultimately notification under Section 3D was issued on 22.11.2005, the land measuring 0.060 hectare of khasra no.119, 0.010 hectare of khasra no.121 and 0.180 hectare of khasra no.122 was decided not to be acquired whereas 0.130 hectare land of khasra no.123 originally proposed to be acquired was reduced to just 0.030 hectare. As against this, 0.300 hectare of khasra no.126 owned by petitioner Om Prakash was reduced to 0.18 hectare whereas 0.100 hectare of lands of khasra no.127 was reduced to 0.01 hectare and 0.010 hectare land of khasra no.128 was reduced to merely 0.01 hectare when finally notification under Section 3D was issued on 22.11.2005. In the similar fashion, in so far as land of petitioner no.2 Nand Kishore is concerned, while originally in the notification under Section 3A of the Act

dated 16.2.2005, the land of khasra no.147, measuring 0.190 hectare, khasra no.148, measuring 0.140 hectare and khasra no.151 measuring 0.180 hectare though proposed to be acquired but ultimately when notification under Section 3D was issued on 22.11.2005 they were altogether excluded from the purview of acquisition. What is therefore found on examination of these facts is that there was no definite proof of the pattern that only land owned by respondent no.7 was left out and land of the petitioners was acquired exactly on the lines on which it was proposed to be acquired. Necessity for acquisition of the land of the petitioners subsequently was also reflected in fresh notifications, which would be evident by issue of fresh notification. This fresh notification was issued because when earlier notification was issued under Section 3A, such land was not included but on survey being conducted

on the ground and the actual plan prepared, it was found necessary to acquire such land so as to implement the project. It was therefore that fresh notification under Section 3A was issued on 9.12.2005 proposing to acquire additional land of Om Prakash measuring 0.16 hectare of khasra no.128, 0.195 hectare of khasra no.129 by issue of notification under Section 3A on 9.12.2005 followed by another notification under Section 3D on 19.4.2006. Similarly, in regard to land of petitioner Nand Kishore, 0.22 hectare of khasra no.144, 0.20 hectare of khasra no.145, 0.22 hectare of khasra no.146 and 0.13 hectare of khasra no.152 and 0.37 hectare of khasra no.153 was acquired.

What should be the alignment of the road and what is technically and geometrically best alignment for construction of the highway, is a matter of determination by the engineering experts in

the field. The petitioners have though made bald allegations in the petition that the alignment of the road has been changed in order to favour the respondent no.7, but they have neither laid a proper foundation for the allegation of mala fides nor have given particulars and datas to substantiate any such allegation. Although it was orally argued that the husband of the respondent no.7 was at a given point of time Divisional Commissioner at Kota but no details have been given as to for which period he was holding that office. No assertion to this effect has been made anywhere in this writ petition and this is contested by the respondents who asserts that he was not at the relevant time posted as Divisional Commissioner. What is more, even the husband of respondent no.7 has not been impleaded as party respondent on allegations of mala fides. Nor the officer who allegedly acted at his behest is

impleaded as party respondent. It is easier to allege mala fides, but very difficult to prove such allegations. Such assertions cannot be therefore accepted on mere ipse-dixit of the petitioners particularly when they have been denied by respondents. The petitioners have not challenged any of the notifications issued either under Section 3A or under Section 3D of the Act. In fact, with the issuance of notification under Section 3D, land not only now vest in Union of India, but its actual possession has also been handed over to the Project Officer, National Highway No.76. The work of the highway, as rightly submitted by the respondents, has been lying standstill for last more than one year on account of status quo order passed in the present petition.

In view of above, therefore, no case is made out for issuance of a writ of mandamus requiring the respondents to change the

alignment of the road or to retain the alignment which according to the petitioners was originally proposed.

In view of above discussion, I do not find any merit in this writ petition. The writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-